

APPEAL NO. 021417  
FILED JULY 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 22, 2002. The appellant (carrier) appeals the hearing officer's determinations that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the sixth and seventh quarters. The carrier further appeals the hearing officer's determination to deny the carrier's second motion to continue the CCH. The claimant responds, urging affirmance.

DECISION

Affirmed.

The hearing officer determined that the claimant had satisfied the good faith requirement under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) by returning to work in the relevant qualifying periods in a job relatively equal to his ability to work. The question of whether a job is relatively equal is a question of fact for the hearing officer and the focus of the inquiry is on the hours worked and the ability to work. Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000; Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established concerning the claimant's eligibility for the sixth and seventh quarters of SIBs. After review of the record and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Further, Section 410.155(b) of the 1989 Act and Rule 142.10(b)(2) provide that the Texas Workers' Compensation Commission may grant a continuance if the hearing officer determines that good cause exists for the continuance. We review good cause determinations under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 002251, decided November 8, 2000. The hearing officer's determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. Under the circumstances of this case, we cannot conclude that the hearing officer abused his discretion in determining that good cause did not exist to grant the carrier a second continuance.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge